IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA203/2019
[2019] NZCA 229

BETWEEN	DONNA CATHERINE PARANGI Appellant
AND	THE QUEEN Respondent

Hearing:	22 May 2019
Court:	Kós P, Peters and Mander JJ
Counsel:	S J Gray for Appellant J E L Carruthers for Respondent
Judgment:	18 June 2019 at 3 pm

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by Peters J)

[1] Following a jury trial Ms Parangi was convicted of the November 2015 manslaughter of her eight-month-old grandson, Isaiah.[1] In May 2019, Fitzgerald J sentenced Ms Parangi to two years, six months' imprisonment.[2] Ms Parangi appeals against sentence on the ground that it is manifestly excessive.

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1 Crimes Act 1961, ss 157, 160(2)(b), 171, and 177. The maximum penalty is life imprisonment.
2 *R v Parangi* [2019] NZHC 996 [Sentencing notes].

[2] The Judge adopted a starting point of three years, eight months' imprisonment,[3] and then gave a discount of 30 per cent, or 14 months, to take account of Ms Parangi's prior good character (15 per cent), the fact that her state of health would make serving a sentence of imprisonment more difficult than would otherwise be the case (10 per cent), and for compassionate and cultural reasons (5 per cent).[4]

[3] Ms Parangi's case on appeal is that the Judge's starting point was too high and that in consequence the sentence is manifestly excessive. She does not contest the discount the Judge allowed for personal mitigating factors.

Facts

[4] Ms Parangi lived in Ruatoki with her partner, and her daughter Ms Te Whetu, Ms Te Whetu's partner, Mr Neil, and their three children, including Isaiah.

[5] On 2 November 2015, Ms Parangi and Ms Te Whetu drove to Kawerau to buy synthetic cannabis, to which both were addicted. Isaiah was with them, and asleep in his car seat when they returned home at about 12.30 pm. Ms Parangi told Ms Te Whetu to leave Isaiah asleep in the car and the two then went inside.

[6] The evidence was to the effect that Ms Te Whetu parked the car in the backyard of the house and in full sun, with the windows, doors and sunroof closed. The temperature in Ruatoki that day was approximately 21 degrees Celsius and the temperature inside the car would have reached at least 41 degrees Celsius within 45 minutes or thereabouts.

[7] After going inside, Ms Te Whetu consumed synthetic cannabis and went to bed. Mr Neil did likewise. None of this was unexpected. Ms Parangi attended to some household chores, and then she too smoked synthetic cannabis and fell asleep on the couch. This also was not unexpected. The Judge was satisfied that none of these adults checked on Isaiah before Mr Neil got Isaiah out of the car between 2.45 pm and 3 pm that afternoon.[5]

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3 At [44].
4 At [64]–[65].
5 At [13], [15] and [18].

[8] Mr Neil's evidence was that Isaiah was hot, sweaty, and appeared lifeless when retrieved. He took Isaiah inside, laid him next to Ms Te Whetu, and went back to sleep. Ms Te Whetu noticed Isaiah was still but put him in his cot thinking he was still asleep. Ms Parangi remained asleep throughout. The Judge found that Isaiah was either dead when put in his cot or critically unwell and in need of urgent medical attention.[6]

[9] Ms Te Whetu found Isaiah lifeless in his cot when she woke at 6.30 pm. She woke Ms Parangi and Mr Neil and called an ambulance. Isaiah was pronounced dead at 7.30 pm. All four pathologists, including two called by the defence, agreed that death was likely to have resulted from dehydration and hyperthermia, being extreme internal temperature elevation.

[10] Ms Parangi, Ms Te Whetu and Mr Neil were each charged with manslaughter. The case first went to trial before Lang J in May 2017. Ms Te Whetu and Mr Neil pleaded guilty shortly before trial, and Ms Parangi defended the charge and was found guilty. The trial before Fitzgerald J followed Ms Parangi's successful appeal against conviction to this Court.[7]

Starting point

[11] The Judge considered the following matters relevant in assessing Ms Parangi's culpability.[8]

[12] First, Ms Parangi was party to leaving Isaiah in the car, in the sun with closed doors and windows.

[13] Secondly, she did not check on Isaiah. Ms Gray, counsel for Ms Parangi, submitted the evidence before the Judge was to the opposite effect, by reference to a statement Ms Parangi had made to the police in an interview produced at trial. We do not accept this submission. Having heard all the evidence at trial, the Judge was entitled to reject Ms Parangi's account and reach the conclusion she did.

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6 At [23].
7 *Parangi v R* [2018] NZCA 46.
8 Sentencing notes, above n 2, at [31]–[43].

[14] Thirdly, knowing that no-one else in the household could be expected to get Isaiah out of the car or otherwise care for him, Ms Parangi smoked synthetic cannabis. She did so knowing that this would render her incapable thereafter. Ms Parangi usually went into a deep sleep after consuming the drug, and that is what occurred on this occasion.

[15] In arriving at a starting point of three years, eight months, the Judge took into account the relevant purposes and principles of sentencing; the authorities to which counsel had referred her; and Lang J's starting points for Ms Te Whetu and Mr Neil,[9] being four years, two months and two years, nine months respectively.[10] Lang J's starting point for Ms Parangi, overtaken by her successful appeal against conviction, had been four years.[11]

[16] Fitzgerald J was satisfied that her starting point was a fair reflection of Ms Parangi's culpability, and was also consistent with the starting points adopted to reflect her daughter and son-in-law's culpability.[12]

[17] Ms Gray submitted the starting point was too high having regard to two of the authorities to which the Judge referred, *E (CA689/2010) v R* and *R v Tukiwaho.*[13] The Judge considered Ms Parangi more culpable than the defendants in those cases, hence her higher starting point. We shall come to Ms Gray's submission shortly but first note that the Judge referred to seven cases in total. Four were at one end of the possible range, these being cases in which the Court discharged the defendant, with or without conviction, but did not otherwise impose any sentence.[14] In another, *R v Peterson*, the defendant abandoned her child in the bush whilst under the influence of methamphetamine, in the "honest although entirely irrational belief" this would best keep the child safe.[15] It is apparent from the sentencing notes in that case that, at the

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9 At [24]–[43].
10 *R v Neil* [2017] NZHC 1494 at [34] and [38].
11 At [29].
12 Sentencing notes, above n 2, at [44].
13 *E (CA689/2010) v R* [2011] NZCA 13, (2011) 25 CRNZ 411; and *R v Tukiwaho* [2012] NZHC 1193.
14 *R v X* [2015] NZHC 1244; *R v Scott* [2015] NZHC 3239; *R v Illston* HC Wanganui CRI-2011-034-273, 26 October 2011; and *R v Waiba* HC Auckland T025743, 8 August 2003.
15 *R v Peterson* HC Whangarei CRI-2007-088-899, 20 December 2007 at [5].

very least, the defendant was labouring under a personality disorder, and quite possibly more than that. Baragwanath J adopted a starting point of five years' imprisonment.[16]

E (CA689/2010) v R and *R v Tukiwaho*

[18] In *E (CA689/2010) v R*, E left her 13-month-old son in the bath, filled to his chest, for about 15 minutes while she attended to another child. The boy had drowned by the time E returned.[17] This Court reduced E's starting point from four to three years for several reasons, including that E left the child to attend to her other child, and because it was satisfied that her depressive illness had impaired her judgment and so reduced her culpability.[18] The Judge considered Ms Parangi more culpable because Isaiah had been left in a situation of danger for a much longer time and E had been diverted by another child. The Judge contrasted that with what she described as Ms Parangi's decision to engage in recreational drug use.[19]

[19] In *R v Tukiwaho*, Ms Tukiwaho had consumed alcohol all day and was intoxicated.[20] Following a domestic violence incident at her home she went, with her baby, to her sister's address late at night where she was unable to gain access to the house. Given that, Ms Tukiwaho went to sleep in the back seat of a vehicle at the address, with her baby on her shoulder, intending that this would keep him warm. The baby suffocated during the night.[21] Lang J, the sentencing judge, said Ms Tukiwaho's culpability lay in her engaging "in a sustained period of drinking that effectively robbed [her] of the ability to reason and to make sound judgments" about her son's welfare.[22] Fitzgerald J considered Ms Parangi more culpable than Ms Tukiwaho. This was because she decided to leave Isaiah in the car, and then consume the drugs, whilst sober.[23]

[20] Ms Gray submitted that there is nothing between this case and *E (CA689/2010) v R* and *Tukiwaho*. E left her child in an equally if not more

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16 At [10].
17 *E (CA689/2010) v R*, above n 13, at [11]–[12].
18 At [67].
19 Sentencing notes, above n 2, at [32].
20 *R v Tukiwaho*, above n 13, at [4].
21 At [5]–[9].
22 At [15].
23 Sentencing notes, above n 2, at [33].

dangerous situation than Isaiah. Ms Tukiwaho and Ms Parangi both made poor decisions under the influence of voluntarily consumed drugs. Ms Gray also submits that the Judge was wrong to describe Ms Parangi's drug use as "recreational". Having regard to a psychiatric report, Ms Gray contended Ms Parangi's drug use was an almost necessary "release" from very straitened circumstances.

[21] We do not accept these submissions. E's case is plainly different because of her mental illness. As to Ms Tukiwaho, she unexpectedly found herself sleeping in the car, with her child, and in circumstances not of her making. These factors distinguish the two cases from the present. As to addiction, although this may constitute a mitigating personal factor, relevant to that aspect of sentencing rather than the starting point, it would not have taken more than a minute or two to get Isaiah out of the car or take other steps to ensure his safety. Ms Parangi's desire or need (however it is characterised) to smoke synthetic cannabis should always have been a secondary consideration to Isaiah's safety.

[22] In considering this appeal, we have also taken into account Lang J's starting point of four years, two months' imprisonment for Ms Te Whetu. On the evidence at the first trial, Lang J saw little to distinguish the culpability of the two women. Fitzgerald J was more generous to Ms Parangi, drawing a clear distinction in her favour with a six-month lower starting point. No more than that was required.

[23] To conclude, the critical features of this case are that Ms Parangi made a decision to leave Isaiah in a car, in the sun, and decided to smoke the synthetic cannabis without first making sure Isaiah was safe. At the time she made this latter decision, Ms Parangi knew that she would be incapacitated thereafter, and she had no reason to expect that anyone else would ensure Isaiah's safety.

[24] Taking all of these matters into account, we do not consider that the starting point, and therefore the sentence, was manifestly excessive.

Result

[25] The appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent